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In the Supreme Court
OF THE
United States

OCTOBER TERM 1980

SEAFARERS INTERNATIONAL UNION
PACIFIC DISTRICT-PACIFIC MARITIME
ASSOCIATION PENSION PLAN
Petitioner,

vs.

NOEL ZEONA STONE,
Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI
to the United States Court of Appeals
for the Ninth Circuit

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STATEMENT OF THE CASE

Noel Zeona Stone (Noel) and Ward Stone had been married for some twenty-four years when she obtained an Interlocutory Judgment of Dissolution of Marriage from the California Superior Court for Alameda County. The judgment, entered on September 24, 1974, provided that 40% of the retirement benefits then being received by Ward Stone from the Seafarers International Union Pacific

District—Pacific Maritime Association Pension Plan (petitioner) were to be paid directly to Noel as her community property share of the asset.

Ward Stone failed and refused to comply with the order. Noel was unsuccessful in her attempts to cite him for contempt, execute against his assets, and join petitioner in an action to modify the judgment.

On May 3, 1977, Noel filed a civil suit for conversion against Ward Stone and petitioner in the California state courts. The complaint sought, as against petitioner, an order directing it to deliver Noel's share of the benefits to her as they became payable.

Alleging federal preemption, petitioner sought to remove the action to the United States District Court for the Northern District, and filed its answer following removal. The parties stipulated to the facts for purposes of cross-motions for summary judgment. Judge Renfrew granted Noel's motion and ordered petitioner to pay her interest to her directly as it became payable. The action against Ward Stone was remanded to the California Superior Court for lack of jurisdiction. Petitioner thereafter filed an appeal to the United States Court of Appeals for the Ninth Circuit.

Four amicus curiae briefs were filed along with those of petitioner and Noel. The Carpenters Pension Trust for Southern California intervened as an appellant, and the case at bar was consolidated with *Carpenters Pension Trust of Southern California v. Kronschnabel.*

Circuit Judge Wallace, in his written opinion affirming the decisions of the district courts in the case at bar and in *Kronschnabel,* stated as follows:

> . . . the Supreme Court's summary dismissal of the appeal in *In re Marriage of Campa,* 444 U.S. 1028, 100 S. Ct. 696, 62 L. Ed. 2d 664 (1980) (Campa), binds district and circuit courts to the view that ERISA does not preempt state-court orders requiring a pension plan to pay a community property share of a plan participant's monthly benefit payments directly to his or her ex-spouse. [Stone v. Stone, 632 F. 2d 740 (1980)].

REASONS FOR DENYING THE WRIT

I

THE QUESTION RAISED BY PETITIONER IS UNIMPORTANT IN THAT ITS CONTENTION OF FEDERAL PREEMPTION OF STATE COURT ORDERS DIVIDING PENSION BENEFITS HAS BEEN NEARLY UNANIMOUSLY REJECTED BY THE COURTS AND INTERESTED DEPARTMENTS OF THE FEDERAL GOVERNMENT

The state and federal courts and departments of the federal executive branch are nearly unanimous in their rejection of the contentions raised by petitioner herein, and have recognized the rights of states to order pension plans to make payments directly to non-employee spouses.

The courts of California have endorsed the conclusions reached in the two decisions below, in *In re Marriage of Campa,* 89 Cal. App. 3d 113, 152 Cal. Rptr. 362 (1979), *appeal dismissed,* 444 U.S. 1028, 100 S. Ct. 696 (1980); *Johns v. Retirement Fund Trust,* 85 Cal. App. 3d 511

(1978), *hearing denied* by the Supreme Court of California on December 20, 1979; and *In re Marriage of Johnstone,* 85 Cal. App. 3d 900 (1978).

Two United States district courts in the Ninth Circuit have concurred in this result in four decisions. *Stone v. Stone,* 450 F. Supp. 919 (N.D. Cal. 1978), *affirmed,* 632 F. 2d 740 (9th Cir. 1980); *Estrada v. Laborer's Pension Trust* (No. C78-1818 SW, N.D. Cal. 1980); *Carpenters Pension Trust Fund v. Kronschnabel,* 460 F. Supp. 978 (C.D. Cal. 178), *affirmed,* 632 F. 2d 745 (9th Cir. 1980), and *In re Marriage of Pardee,* 408 F. Supp. 666 (C.D. Cal. 1976). One court in the Ninth Circuit has dissented, in *Francis v. United Technologies Corp.,* 458 F. Supp. 84 (N.D. Cal. 1978). The short and conclusionary opinion in *Francis* ignores the policies and histories so carefully examined and evaluated by Judge Renfrew in *Stone.*

The United States Department of Labor, in its amicus curiae brief in *Stone,* as well as the briefs of the Department of Justice, on behalf of the Departments of Labor and Treasury, in *American Tel. & Tel. Co. v. Merry,* 592 F. 2d 118 (2d Cir. 1979), and *Cartledge v. Miller,* 457 F. Supp. 1146 (S.D.N.Y. 1978) confirm and endorse the result reached by the Ninth Circuit in the case at bar.

The President's Commission on Pension Policy issued a report last year which specifically recommended and encouraged the treatment of pension benefits as community property and allowing their division by state courts.[1]

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[1]Congressional Record S5908 May 28, 1980.

The Internal Revenue Service has demonstrated its position on such issues in two separate rulings. Revenue Ruling 80-27 (I.R.B. 1980-4, 8) allows the trustee of a plan qualified under ERISA to comply with family support orders made by State courts without disqualification of the plan. Similarly, Private Letter Ruling 7952045 permits distribution from an H.R. 10 plan of a community property interest without disqualification.

Clearly, the weight of authority in this country supports the recognition of pension plan benefits and rights as property subject to disposition and division by state courts. Respondent respectfully submits that, for all practical purposes, the issue is moot and no longer of sufficient importance to warrant consideration by this Court. Petitioner would have this Court close the proverbial barn doors long after the cows are gone.

II

THE DECISIONS BELOW ALLOW CALIFORNIA COURTS TO CONTINUE TO DIVIDE COMMUNITY PROPERTY INTERESTS IN PENSION PLAN BENEFITS SINCE THOSE COMMUNITY PROPERTY LAWS DO NOT "RELATE TO" REGULATED PENSION PLANS

Petitioner ignores the prerequisites for federal preemption of a state law. They are: the unequivocal intention of Congress to preempt those state laws, or the existence of a direct conflict between the state and federal laws.[2]

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[2]When there is no clear Congressional intent to preempt state law, enforcement of the state law should proceed unless such enforcement would result in "irreconcilable conflict" with federal legislation. *Florida Avocado Growers v. Paul* (1963), 373 U.S. 132, at 142-143, 146.

A. Congress Did Not Intend to Preempt California's Community Property Laws by Its Adoption of ERISA

There are few areas of law which have been left by Congress exclusively to the states. One of them, however, is family law; that is, the domestic relations of the family and the laws regarding its property.

> Domestic relations is a field peculiarly suited to state regulation and control, and peculiarly unsuited to control by the federal courts. *Buechold v. Ortiz,* 401 F. 2d 371, 373 (9th Cir. 1968).
>
> The whole subject of the domestic relations of husband and wife . . . belong to the laws of the States and not to the laws of the United States. *In re Marriage of Burrus,* 136 U.S. 586, 594 (1890).

In ERISA, Congress has not expressed an unequivocal intent to broadly preempt California community property laws.[3]

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[3]Section 514 of ERISA (29 U.S.C. § 1144) provides, in part:

> (a) . . . the provisions of this title and title IV shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan described in section 4(a) and not exempt under section 4(b).
>
> (b) . . .
>
> (c) For purposes of this section:
>
> (1) The term "State law" includes all laws, decisions, rules, regulations, or other State action having the effect of law, of any State . . .
>
> (2) The term "State" includes a State, any political subdivisions thereof, or any agency or instrumentality of either, which purports to regulate, directly or indirectly, the terms and conditions of employee benefit plans covered by this subchapter.

Petitioner argues that Congress intended to preempt every state law which could have any influence or effect on the administration of pension plans. Many community property laws are two hundred years old or more and have developed over these years into a body of law recognized and followed by several states, and affecting marriages and judicial decisions in every other state. It is inconceivable that Congress would preempt such a large body of law without a single word indicating that intention.

> Where . . . the field which Congress is said to have preempted has been traditional'y occupied by the States . . . "we start with the assumption that the historic . . . powers of the States were not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress." *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947). . . . This assumption provides assurance that "the federal-state balance," *United States v. Bass,* 404 U.S. 336, 349 (1971) . . . will not be disturbed unintentionally by Congress or unnecessarily by the courts. *Jones v. Rath Packing Co.,* 430 U.S. 519, 525 (1977).

The extent of Congress' intention to preempt state law is described by Senator Jacob Javits in a Senate Report on ERISA. He clearly indicates that only *direct* regulation of pension plans and their administration was to be superseded.

> In view of Federal preemption, state laws compelling disclosure from private welfare or pension plans, imposing fiduciary requirements on such plans, imposing criminal penalties on failure to contribute to plans—unless in criminal statutes of general application—establishing state termination insurance programs, et cetera, will be superceded. 120 Congressional Record 29942 (1974).

Petitioner argues that states are not free to regulate pension plans in any way. It follows from petitioner's arguments that the buildings which are owned by or which house pension plans are not subject to city, county or state building codes; that pension plans are not subject to California's laws of public liability, contracts or Workmen's Compensation laws; or that benefits paid are not subject to California Income Taxes. Petitioner argues that state laws which are not preempted are specified in ERISA, and only those laws are not preempted. However, building codes, public liability and Workmen's Compensation laws, as only a few examples, are not so specified and, by this line of reasoning are preempted. Noel submits that this is not what Congress intended and not what § 514 accomplishes.

It is unreasonable to conclude that Congress intended the broad language of § 514 to so preempt without any clarification or specificity. Elsewhere in ERISA, Congress specifically provided for limited preemption of community property laws where it found supersession to be necessary. On the deductibility of contributions to retirement savings for personal income taxes, and taxation of lump sum distributions, Congress specified, both in ERISA and in its legislative history, that applicable community property laws would be preempted.[4] Congress has shown, by the specific exclusion, that it will use strong, clear language when it intends to preempt the legislative field.

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[4] § 2002(a), of ERISA, 26 U.S.C. 291(c)(2). HOUSE COMMITTEE ON WAYS AND MEANS, HOUSE REPORT No. 93-807, U.S. CODE, CONG. AND AD. NEWS, 93rd Cong., 2nd Session, 4793 (1974).

An intention to include state domestic relations laws and orders among those to be preempted by § 514 should not be inferred. In *In re Marriage of Fithian* (1974) 10 Cal. 3d 592, *certiorari denied* 419 U.S. 825 (1974), the California Supreme Court refused to deprive a spouse of her interest in a pension created by federal law on the grounds of preemption, unless the enforcement of that interest would "frustrate" the intent of the federal law. The Court further refused to infer such an intent in the absence of a clear expression by Congress.[5]

Since there is no clear Congressional intent to preempt California's community property laws, that preemption can only occur if there exists a direct conflict between the purposes or effects of the state and federal laws.

B. California Laws Requiring Division of Property Rights in Pension and Retirement Benefits Do Not Conflict With the Federal Regulation Under ERISA

California's procedures for division of community property do not conflict with the federal requirements and minimum standards for the uniform administration and taxation of pension plans as described in ERISA. They merely define a logical framework for an equitable distribution of the rights represented by the funds, once the funds have been properly administered by the pension plans.

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[5]The common sense inherent in the Court's decision was reflected in *In re Marriage of Pardee*, 408 F. Supp. 666, at 669, n. 4 (C.D. Cal. 1976):

> An intent to regulate pension plans does not necessarily include an intent to control the state's distribution of family assets in divorce and separation proceedings.

California's domestic relations laws are "an ingenious, complex, and highly purposeful distribution of property rights between husband and wife . . ." *U.S. v. Yazell,* 382 U.S. 341, 351 (1966). Any intrusion by the federal government into this area will result in any number of untoward, undesired and troublesome consequences. Therefore, this Court stated, in *Yazell,* at page 352:

> Both theory and the precedents of this Court teach us solicitude for state interests, particularly in the field of family and family-property arrangements. They should be overridden by the federal courts only where clear and substantial interests of the National Government, which cannot be served consistently with respect for such state interests, will suffer major damage if the state law is applied.

Congress has expressed its intentions with regard to the purposes and scope of ERISA, in Section 2(b) and (c) [29 U.S.C. § 1001(b) and (c)]:

> (b) It is hereby declared to be the policy of this Act to protect interstate commerce and the interests of participants in employee benefit plans and their beneficiaries, by requiring the disclosure and reporting to participants and beneficiaries of financial and other information with respect thereto by establishing standards of conduct, responsibility, and obligation for fiduciaries of employee benefit plans, and by providing for appropriate remedies, sanctions, and ready access to the Federal courts.
>
> (c) It is hereby further declared to be the policy of this Act to protect interstate commerce, the Federal taxing power and the interests of participants in private pension plans and their beneficiaries by improving

> the equitable character and the soundness of such plans by requiring them to vest the accrued benefits of employees with significant periods of service, to meet minimum standards of funding, and by requiring plan termination insurance.

Congress clearly indicated that the "clear and substantial interests" to be protected by ERISA were the administrative, informational and remedial rights of plan participants and their beneficiaries. These regulations, plus protection of interstate commerce and the federal taxing power, are what must suffer "major damage" in order to require preemption.

Contrary to congressional declaration, petitioner relies on the damage alleged to be occasioned upon a pension fund by a court ordered division as in the case at bar. While there may be certain costs and burdens, they are neither "clear" nor "substantial." If state court division problems were its concern, Congress never so stated. Furthermore, the interests stated by Congress in § 2(b) and (c), supra, will not suffer any "major damage" at all. Even assuming the costs alleged by petitioner are burdensome, they are slight when compared to the total amounts of the funds involved and the importance of the funds to those persons, including non-employee spouses, who are entitled to benefit from them. Indeed, when Congress spoke of "improving the equitable character" of plans, it certainly intended that the equitable rights of those entitled to benefit from the plans should be of greater concern than speculative increases in plan overhead.

III

THE DECISIONS BELOW DEMONSTRATE THAT COURT ORDERED TRANSFERS OF PENSION RIGHTS AND BENEFITS PURSUANT TO CALIFORNIA'S COMMUNITY PROPERTY LAWS ARE NOT PROHIBITED BY THE ANTI-ASSIGNMENT AND ALIENATION LANGUAGE OF ERISA

Petitioner contends that § 206(d)(1) of ERISA[6] prohibits orders such as that made by the United States District Court herein, which require direct payments of pension benefits to Noel. Petitioner submits that these orders constitute an assignment or alienation of benefits, both of which are prohibited by that section. Noel submits that such an order constitutes neither an assignment nor an alienation.

Under California law, an assignment, according to *Cockerell v. Title Insurance and Trust,* 42 Cal. 2d 284, 291 (1954), must be:

> . . . a manifestation to another person by the owner of the right indicating his intention to transfer, without further action or manifestation of intention, the right to such other person, or to a third person . . .

The plain meaning of the word assignment, as recognized by Judge Renfrew, excludes a court ordered transfer in recognition of such an ownership interest.

Congress demonstrated its understanding that prohibitions against alienation are not to be applied to community

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[6]Section 206(d) of ERISA [29 U.S.C. § 1056(d)(1)] provides in part:

> Each pension plan shall provide that benefits provided under the plan may not be assigned or alienated.

property claims when it enacted § 2022(b) of ERISA [26 U.S.C. § 408(d)(5)] which allows the "transfer" of retirement annuities and bonds in domestic relations proceedings.[7] Congress clearly anticipated that transfers in the context of dissolution of marriage are necessary and proper and therefore should not be prohibited.

IV

THE DECISIONS BELOW RECOGNIZE THAT NOEL SHOULD NOT BE DENIED HER COURT ORDERED OWNERSHIP INTEREST IN THE PENSION BENEFITS BY THE STRICT DEFINITIONS OF "PARTICIPANT" AND "BENEFICIARIES" IN ERISA

"Participants" and "beneficiaries" are defined in Section 3 (7) and (8) of ERISA.[8] This Court has found that such

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[7]26 U.S.C. § 408(d)(5) provides in part:

> The transfer of an individual's interest in an individual retirement account, individual retirement annuity, or retirement bond to his former spouse under a divorce decree . . . is not to be considered a taxable transfer made by such individual, notwithstanding any other provision of the subtitle, and such interest at the time of the transfer is to be treated as an individual retirement account of such spouse and not of such individual. Thereafter such account, annuity, or bond for purposes of this subtitle is to be treated as maintained for the benefit of such spouse.

[8]Sections 3(7) and 3(8) of ERISA [29 U.S.C. § 1002(7) and (8)] provide as follows:

> The term "participant" means any employee or former employee of an employer, or any member or former member of an employee organization, who is or may become eligible to receive a benefit of any type from an employee benefit plan which covers employees of such employer or members of such organization, or whose beneficiaries may be eligible to receive any such benefit.
>
> The term "beneficiary" means a person designated by a participant, or by the terms of an employee benefit plan, who is or may become entitled to a benefit thereunder.

definitions are not necessarily exclusive. In *Yiatchos v. Yiatchos,* 376 U.S. 306 (1964), this Court determined that a wife's community property interest in federal bonds could be awarded to her despite the fact that she was not the defined "purchaser" of the bonds. The Court said, at page 309:

> It would seem obvious that the bonds may not be used as a device to deprive the widow of property rights which she enjoys under Washington law and which would not be transferrable by her husband but for the survivorship provisions of the federal bonds.

The California Supreme Court in *Fithian,* supra, has followed *Yiachtos* and incorporated that reasoning in its treatment of pension cases.

The Findings and Declaration of Policy of ERISA states that the provisions of ERISA are to be interpreted to accomplish the goal of providing protection for "employees and their beneficiaries." [§ 2 of ERISA (29 U.S.C. § 1001(a)] A beneficiary is specifically defined in ERISA for purposes of ERISA's substantive provisions, but use of the word in the Findings suggest a broader classification. Inclusion of the family in the definition of the word is supported by the specific reference to the need to protect "the continued well-being and security of millions of employees and their dependents." [29 U.S.C. § 1001(a)].

CONCLUSION

The protections afforded by ERISA should not be used to shield employee spouses from their obligations to non-employee spouses. As dependents, they were intended to be protected by Congress. The weight of authority, as well as

a balancing of equities, does not and could not dictate a conclusion that Congress intended to supersede state domestic relations laws in this regard and allow a refusal to meet familial obligations to occur without a remedy.

The District Court's decision, and the Ninth Circuit's affirmation of it, recognize the rights of the states to make and determine domestic relations law and the rights of non-employee spouse to benefit from her interest in her property.

For all of the foregoing reasons, Noel respectfully submits that the decisions of the Courts below are correct, and that the issues presented do not require or justify consideration of this Court.

Dated: March 19, 1981.

Respectfully submitted,
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